

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TERRELL DEANDRE BEVERLY,

Defendant-Appellant.

UNPUBLISHED

January 10, 2008

No. 273956

Wayne Circuit Court

LC No. 06-003132-01

Before: Fitzgerald, P.J., and Markey and Smolenski, JJ.

PER CURIAM.

Defendant appeals as of right from his convictions at a bench trial of one count of felon in possession of a firearm, MCL 750.224f, two counts of delivery of marijuana, MCL 333.7401(2)(d)(iii), one count of possession of less than 25 grams of cocaine, MCL 333.7403(2)(a)(v), and one count of possession of a firearm during commission of a felony (felony-firearm), MCL 750.227b. The trial court sentenced defendant to two years in prison for the felony-firearm conviction and to two years of probation for each of the remaining offenses, which were to run concurrently. We affirm.

Defendant first argues that he was denied a fair and impartial trial with regard to two instances that allegedly showed the trial court relying on its own specialized knowledge, abandoning its impartiality as a fact-finder, and going outside the record in rendering a verdict. Because this issue was not preserved below, our review is for plain error affecting defendant's substantial rights. *People v Young*, 472 Mich 130, 143; 693 NW2d 801 (2005).

Initially, there is simply nothing in the challenged conduct of the trial court to reasonably support a conclusion that the trial court was biased or abandoned its impartiality. See *In re Susser Estate*, 254 Mich App 232, 237; 657 NW2d 147 (2002) (stating that a trial court's "rulings against a litigant, even if erroneous, do not themselves constitute bias or prejudice sufficient to establish a denial of due process"). Further, any possible error by the trial court in precluding defense counsel from asking a police witness why the relevant gun was not tested for fingerprints did not affect defendant's substantial rights, given the overwhelming evidence that defendant was in possession of the gun. Testimony by police officers clearly established that defendant obtained marijuana from the car trunk where the gun and drugs were found and that a key to that trunk was found on defendant's person. There was no error warranting relief.

Defendant also argues that trial counsel provided ineffective assistance of counsel on multiple grounds. We disagree. To establish a claim of ineffective assistance of counsel a defendant must show that: (1) counsel's performance was deficient, and (2) a reasonable probability that but for the deficient performance the outcome of the proceeding would have been different. *People v Carbin*, 463 Mich 590, 600; 623 NW2d 884 (2001). In light of the overwhelming evidence of guilt, there is no reasonable probability that different conduct by trial counsel would have changed the outcome of the trial. The testimony of the police officers, including one who both bought marijuana from defendant and saw defendant at the time of his arrest, provided overwhelming evidence that defendant sold marijuana to an undercover police officer and that more marijuana, cocaine, and a gun were found in the trunk of a car to which defendant had a key. In the face of this evidence, even if trial counsel had elicited evidence that another person owned or had some type of legal or possessory interest in the car, this would have had no reasonable probability of exonerating defendant of any of the charges. Possession may be joint with more than one person being in possession of an item. *People v Hardiman*, 466 Mich 417, 421; 646 NW2d 158 (2002). Thus, even if there were evidence that another person shared possession of the drugs and gun with defendant, such evidence would not have affected the result of the trial. Accordingly, we also decline defendant's alternative request for a remand for an evidentiary hearing regarding his ineffective assistance of counsel claims.

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Jane E. Markey

/s/ Michael R. Smolenski